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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 SERENDIP LLC & WENDY  
15 CARLOS,

16 Plaintiffs,

17 v.

18 WARNER BROS. ENTERTAINMENT  
19 INC.,

20 Defendant.

21 WARNER BROS. ENTERTAINMENT  
22 INC.,

23 Counter-Claimant,

24 v.

25 SERENDIP LLC & WENDY  
26 CARLOS,

27 Counter-Defendants.  
28

CASE NO. CV 08-07739 RGK (RCx)

The Honorable R. Gary Klausner

**DECLARATION OF WENDY  
CARLOS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**Fed.R.Civ.P.56**

Date: November 30, 2009

Time: 9:00 a.m.

Place: Courtroom 850  
255 E. Temple St.  
Los Angeles, CA

**DECLARATION OF WENDY CARLOS**

I, Wendy Carlos, hereby state and declare as follows:

1. I am a member of Plaintiff Serendip LLC (“Serendip”) and also an individual Plaintiff. I make this Declaration in support of Plaintiffs’ motion for partial summary judgment, in addition to the facts I set out in the Verified Amended Complaint. The facts set forth in this Declaration are true to my own knowledge and, if called as a witness, I could and would testify competently about the matters set forth in this Declaration.

2. I began piano lessons at age 6 and won a Westinghouse Science Fair scholarship for a home built computer at age 16. I pursued a hybrid major in music and physics for my degree at Brown University, where I studied music theory under the well-known conductor Eric Kunzel. I earned an M.A. in music composition from Columbia University, studying with pioneers Otto Luening, Milton Babbitt and Vladimir Ussachevsky at the first electronic music center in the U.S.A. During this time, I assisted Ussachevsky with a live dramatic musical presentation of the play “No Exit,” featuring Viveca Lindfors, and I collaborated with legendary French composer Edgar Varese, working on stage in a New York Philharmonic concert series conducted by Leonard Bernstein.

3. Upon graduation, I worked as a recording engineer and met Robert Moog, becoming one of his first clients and consultants in the development of his synthesizer. In collaboration with Rachel Elkind, who was the producer of my music for a dozen years, my 1968 recording, “Switched-On Bach,” achieved platinum sales status, bringing the Moog synthesizer into the public consciousness and winning three Grammy Awards. We refined our techniques in “The Well-Tempered Synthesizer,” which led to a live demonstration of the synthesizer on stage with Leonard Slatkin conducting the St. Louis Symphony Orchestra. We also composed and recorded music for several live stage productions, working with Irene Pappas in a Broadway production of “Medea.”

1           4.     Following my work in connection with “A Clockwork Orange” and  
2 “The Shining,” which is the subject of this action, I composed the score for the  
3 1982 Disney CGI film, “Tron.” For that score, I composed music for large  
4 symphonic orchestra and chorus, merged in a continuous blend with synthesizers,  
5 which later became a common combination. In 1984, my album, “Digital  
6 Moonscapes,” introduced what I called the “LSI Philharmonic Orchestra,” a  
7 replica of orchestral timbres virtually indistinguishable from their acoustic  
8 instrumental counterparts. At this time, I also composed a concerto for string  
9 quartet and orchestra, conducted by Kent Nagano with the Kronos Quartet.  
10 Nagano also conducted orchestral performances of my music from “Digital  
11 Moonscapes” by the symphonies in Berkeley and Boston.

12           5.     I later worked with alternate scales and musical tunings, combining  
13 music from old world cultures with new classical works, and collaborated with  
14 (Weird) Al Yankovic on a humorous musical album, coupling a parody of  
15 Prokofiev’s “Peter and the Wolf” with a new composition in the spirit of the  
16 Saint-Saens classic, “Carnival of the Animals – Part Two.”

17           6.     Over the years, I have been a member of professional organizations,  
18 including the Audio Engineering Society and the National Academy of Recording  
19 Arts and Sciences, consulted for music software developers, designed PostScript  
20 music fonts and developed libraries and tunings for synthesizer manufacturers.

21           7.     In 2005, the Society for Electro-Acoustic Music in the United States  
22 presented me the SEAMUS Life Achievement Award in recognition of my  
23 “longstanding dedication and meritorious contributions to the field of electro-  
24 acoustic music.”

25           8.     Electro-acoustic Music (“EAMusic”), its focus, motivation and reason  
26 for success, has been concerned with new sounds, new expressive timbres, and  
27 their blending in novel ways, more than just traditional melody, harmony and  
28 rhythm. The latter properties may still be employed, often importantly featured,

1 as EAMusic has developed into a "superset" of earlier music, encompassing both  
2 old and new, a means of expression that extends beyond historical practices.

3 9. That explains why many of us adopted EAMusic, to explore past the  
4 established bounds and limits. I was part of the pioneering movement from the  
5 50s through the 80s that defined and expanded the field, and tried to provide a  
6 common language for the new medium. We trace our roots back to the early 20th  
7 century. But the public's attention lagged until the late 60s, when recorded works,  
8 notably my "Switched-On Bach," appeared, and introduced the modern  
9 synthesizer. By the 21st century, EAMusic has become the dominant music-  
10 making and creative recording medium, used by home enthusiasts working in  
11 bedrooms and garages, rock stars, film composers, and professional composers in  
12 all genres of music making.

13 10. Prior to 1978, the U.S. Copyright Office required a traditional visible  
14 printed score for copyright registration. EAMusic composers like me were forced  
15 to extend traditional music notation, adding graphic and textural elements that  
16 would suggest (as far as possible) the content and musical expression of each new  
17 musical work. During the '60s this compromise grew into a quite comprehensive  
18 documentation..

19 11. Two of my original works, "Title Music from A Clockwork Orange,"  
20 and "Beethoviana" embody a long established practice called "theme and  
21 variation." They are in fact variations on a theme by Henry Purcell ("March for  
22 the Funeral of Queen Mary," written in 1695). Purcell's brief existing score  
23 provided the starting point, a kind of musical skeleton for both final works, which  
24 are otherwise completely original EAMusic compositions, arrangements, and  
25 orchestrations. Thus, the two pieces follow the traditions of many such esteemed  
26 works as: Brahms's "Variations on a Theme by Haydn" and Rachmaninoff's  
27 "Rhapsody on a Theme by Paganini."  
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1           12.   Significantly, if the Purcell theme were "whited-out", i.e., removed  
2 from the final scores, the remaining music is so extensive and detailed that each  
3 would remain a self-standing original composition. That completeness didn't just  
4 happen. It required hours of careful planning and notation; nothing was  
5 improvised. (On the Moog Synthesizer, improvisation was impossible anyway,  
6 with its clumsy one-note-at-a-time, one-line-at-a-time interface, no memory, no  
7 presets, unstable pitch and settings. Every sound/timbre had to be created anew  
8 from scratch, and nothing was automatic, despite popular misconceptions.)

9           13.   "Title Music from CO" and "Beethoviana" were composed in 1971,  
10 with written out scores, used during the compositional organizing and later for  
11 copyright registration purposes. These documents can easily be studied, or even  
12 (in the hands of a skilled electronic musician/performer) given a new electronic  
13 "realization" which would follow the major features and expressions of the  
14 original pieces, timbre by timbre, and note by note, much as traditional scores are  
15 performed regularly on stage and in new recordings.

16           14.   A basic "lead-sheet" cannot capture the depth and unique features of  
17 either of these works. One might, for example, strip-out the "Purcell skeleton"  
18 into a written lead-sheet (after all, that's what I began with). But in so doing  
19 would leave out "all the meat" -- more than two-thirds of the final features that  
20 most listeners immediately respond to, which have given them their "iconic"  
21 status.

22           15.   One cannot capture (nor analyze the essentials of) EAMusic using  
23 simple melodic/harmonic/rhythmic notation. It misses the point, and most of the  
24 music, and is the reason composers of my generation had to extend the crucial  
25 notational expressions. Major importance in EAMusic is placed on the actual final  
26 sounds and their expression, be they sampled ("musique concrète"), generated by  
27 synthesis, or otherwise. Together with the assembly, layering and mixing of  
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1 elements into an acoustic, musical soundfield for the final pieces, these extend  
2 well beyond the limits of a traditional score, what it can reproduce or suggest.

3       16. What Stanley Kubrick sought from me was very different from what  
4 he could have gotten from nearly any other musician of the time. He became  
5 fascinated by the unique qualities that I was able to provide using the then new  
6 EAMusic tools, a fascination that his audiences since have shared enthusiastically.  
7 He wanted more than another generic re-arrangement of the Purcell theme (which  
8 tend to sound surprisingly alike), and in fact replaced such a recording with my  
9 composition/arrangement. The many subtle techniques and expressions are what  
10 make these pieces so recognizable and distinctive even now.

11       17. Attached as Exhibit A are true copies of the working scores for “Title  
12 Music From A Clockwork Orange,” and “Theme From A Clockwork Orange”  
13 (Beethoviana), as submitted to the U.S. Copyright Office for registration of the  
14 copyrights.

15       18. Attached as Exhibit B are true copies of the copyright registration  
16 certificates applicable to the various works I composed or arranged and recorded  
17 in connection with “A Clockwork Orange,” in addition to those attached to the  
18 complaint, and the document whereby ownership of the copyrights was transferred  
19 to Serendip.

20       19. In 1978, after we had heard through a third party that Stanley  
21 Kubrick’s next motion picture project was to be based upon Stephen King’s novel  
22 “The Shining,” Rachel Elkind and I each read the book and eventually had one  
23 brief telephone conversation of less than ten minutes with Kubrick. During this  
24 conversation, Kubrick was unforthcoming and noncommittal about his project or  
25 its status. He gave us no guidance, he did not commission any music, we made no  
26 agreement, we discussed no terms, he did not ask us to do anything, he did not  
27 promise to do anything and neither did Rachel Elkind and I.

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1           20. As further spelled out in Paragraph 9 of the complaint, Rachel Elkind  
2 and I elected to prepare demonstration music at our own expense and selection and  
3 sent it to Kubrick. We heard nothing for months until Jan Harlan contacted us at  
4 the end of 1978 and asked to meet.

5           21. At that meeting in New York, Harlan informed Rachel Elkind and  
6 me that they wished to use one composition from a demonstration tape in the  
7 theatrical trailer to be exhibited beginning about a year before the currently  
8 scheduled release date of "The Shining" at the end of 1979. We provided a  
9 reproduction quality copy of the master recording after which we were paid  
10 \$1000. No agreement was discussed and no commitment was made to retain us as  
11 composers for the soundtrack. At some time in early 1979, we viewed the trailer  
12 containing our composition "Clockworks" at a theater in New York.

13           22. Attached as Exhibit C are true copies of the "Letter Agreement" and  
14 the "Composers Loanout Agreement" dated January 25, 1980.

15           23. Attached as Exhibit D are true copies of Warner's applications for  
16 registration of copyright for "Clockworks" and "Nocturnal Valse Triste."

17           24. Attached as Exhibit E is a true copy of the certificate of  
18 incorporation for Warner Bros. Entertainment Inc.

19           25. Attached as Exhibit F is a true copy of the music credits in the video  
20 feature "Great Bolshy Yarblos!: Making A Clockwork Orange," distributed by  
21 Warner, using my name without my consent in connection with music composed,  
22 arranged and performed by other persons.

23           26. Attached as Exhibit G are true copies of the e-mail communications  
24 whereby Jan Harlan asked for my consent for the video feature "Wendy Carlos,  
25 Composer" and I declined

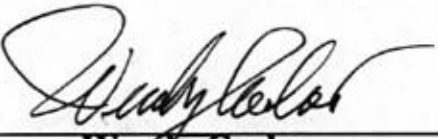
26           27. I have never conducted the business of "offering for sale, selling,  
27 advertising, and distributing compact discs and/or other products," nor does  
28 Serendip actually conduct that business.



1        28. The "Title Music" cue containing the "Dies Irae" was the last cue that  
2 I recorded for "The Shining." The album "Rediscovering Lost Scores" does not  
3 contain the same music cue, nor the version of the music cue entitled "Rocky  
4 Mountains" which appears in "The Shining."

5  
6 I declare under penalty of perjury pursuant to the laws of the United States that  
7 the foregoing is true and correct.

8  
9 November 4, 2009  
at New York, NY

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13 Wendy Carlos  
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